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# (16,842.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1898.

## No. 275.

WILLIAM H. BLACKBURN, PLAINTIFF IN ERROR,

*vs.*

THE PORTLAND GOLD MINING COMPANY AND W. S. STRATTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1898.

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 27th day of August, A. D. 1897, came W. H. Blackburn, by J. E. Rockwell, Esq., his attorney, and filed in said court his complaint, and sued out of and under the seal of said court a writ of summons against the Portland Gold Mining Company and W. S. Stratton.

And the said complaint is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the Eighth Judicial Circuit, Sitting in and for the District of Colorado.

W. H. BLACKBURN, Plaintiff,
*vs.*
THE PORTLAND GOLD MINING COMPANY and W. S. Stratton, Defendants. } Complaint.

Now, on this day, comes the plaintiff and complains of the defendants, and for cause of action alleges:

1st. That the amount in dispute in this cause exceeds, exclusive of interest and costs, the sum of two thousand dollars.

2nd. That this suit is between citizens of different States,
2 in this, to wit, that the plaintiff is a resident of Goldfield, El Paso county, Colorado, and a citizen of the State of Colorado; that the defendant The Portland Gold Mining Company is a corporation organized and existing under and by virtue of the laws of the State of Iowa, and the defendant W. S. Stratton is a citizen of Colorado Springs, El Paso county, Colorado, and is a citizen of the State of Colorado, so that this is a suit between citizens of different States, in this, to wit, that the plaintiff is a citizen of the State of Colorado, defendant The Portland Gold Mining Company is a citizen of the State of Iowa, and the defendant W. S. Stratton is a citizen of the State of Colorado.

3rd. That this is a suit of a civil nature at common law and arises under the laws of the United States, as hereinafter stated.

4th. That among the questions of the construction of said statutes arising and necessary to be determined and adjudicated in this action are the following, to wit:

That this is an adverse suit and a suit arising under the provisions of sections 2325 and 2326, Revised Statutes of the United States, and is what is known as a suit in support of an
3 adverse claim, in this, to wit:

That the defendant W. S. Stratton herein applied for a patent for a portion of the Fairplay Lode mining claim, survey lot No. 9331, under and by virtue of the provisions of section 2325, and the plaintiff, under and by virtue of section 2326 of the Revised Statutes of the United States, filed his adverse claim and protest

against the entry of said portion of said Fairplay claim, upon the ground that a part thereof was held and owned by this plaintiff as a part and parcel of the Eacho Lode mining claim, and this is an adverse suit in support of said adverse claim and protest.

Plaintiff further alleges that said W. S. Stratton, one of the defendants herein, on or about the 4th day of February, 1897, made application in the United States land office at Pueblo, Colorado, for patent on said portion of said Fairplay Lode mining claim under and by virtue of the provisions of said section 2325, and that at the time said Stratton made his said application for patent on said portion of said Fairplay Lode mining claim he was not the real owner thereof, neither did he have any interest or title whatsoever therein; that long prior to said time the said Stratton had by good and sufficient deed conveyed all his right, title, and interest in and to said claim to the defendant The Portland Gold Mining Company,
4 who, on said 4th day of February, 1897, was and ever since has been, the real owner and in the actual possession of said claim, and for that reason this plaintiff brings this action against the said The Portland Gold Mining Company jointly with said Stratton.

That at all the times herein mentioned the plaintiff was and now is a citizen of the United States of America.

That heretofore and on the 1st day of February, 1897, and ever since, the plaintiff was and now is the owner of and in the actual possession of the Eacho Lode mining claim, 1,500 by 300 feet, situate in the Cripple Creek mining district, El Paso county and State of Colorado.

That plaintiff claims and has the legal right to occupy and possess said premises and the whole thereof and is entitled to the possession thereof by virtue of a full compliance with the local rules and regulations of miners in said mining district and of the laws of the United States of America and of the State of Colorado and by pre-emption, discovery, and location thereof as a lode mining claim located on the public domain of the United States.

That on the 4th day of February, A. D. 1897, the defendant wrongfully and unlawfully entered into and upon a parcel of the said Eacho Lode mining claim described as follows, to wit: All that part of said claim which is intersected by the exterior lines of
5 survey No. 9331, known as the Fairplay Lode mining claim, as shown by plat marked Exhibit B, filed on the 28th day of July, 1897, in the land office of the United States at Pueblo, Colorado, with the adverse claim of plaintiff against the entry of said survey lot for patent, such ground so intersected being described by metes and bounds as follows:

Beginning at cor. No. 1, Eacho lode, identical with cor. No. 1, Sur. No. 9331, Fairplay lode, thence N. 4° 46′ E. 328.4 ft. to cor. No. 2, Fairplay lode; thence N. 61° 14′ W. 1,500.0 ft. to cor. No. 3, Fairplay lode; thence S. 4° 46′ W. 328.4 ft. to cor. No. 4, Fairplay lode; thence S. 61° 14′ E. 1,500.0 ft. to cor. No. 1, Fairplay lode, the place of beginning, containing 10.331 acres.

That the defendants hath ever since hitherto, and now do, wrong-

fully withhold possession of said parcel of said Eacho Lode mining claim from the plaintiff, to his damage in the sum of one thousand dollars ($1,000.00).

That this suit is brought in support of said adverse claim, and is brought within thirty days after the filing of said adverse claim, and that plaintiff has necessarily disbursed and expended the sum of one hundred dollars for plats, abstracts, and copies of papers filed in said land office with said adverse claim, and also a reasonable counsel fee, to wit, two hundred dollars, for the expense of preparing his said adverse claim.

6 Wherefore plaintiff prays judgment against the defendant:

1st. For a judgment that he is the owner and entitled to the possession of and patent to the above-described parcel of said Eacho Lode mining claim and for the recovery of the same.

2nd. For the sum of one thousand dollars ($1,000.00) damages.

3rd. For the sum of three hundred dollars ($300.00), expended in behalf of said adverse claim.

4th. For costs of suit.

J. E. ROCKWELL,
*Attorney for Plaintiff.*

(Indorsed:) 3623. United States of America, district of Colorado. W. H. Blackburn, plaintiff, *vs.* The Portland Gold Mining Company and W. S. Stratton, defendants. Complaint. Eacho *vs.* Fairplay. Filed Aug. 27, 1897. Robert Bailey, clerk. J. E. Rockwell, pl'ff's att'y.

And the said summons and proof of service *is* in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } *ss:*
*District of Colorado,* }

In the United States Circuit Court for the District of Colorado.

7 *Complaint. Filed in the Clerk's Office This 27th Day of August, A. D.* 1897.

W. H. BLACKBURN, Plaintiff,
*versus*
THE PORTLAND GOLD MINING COMPANY and W. S. STRATTON, Defendants.

The President of the United States of America to the above-named defendants, Greeting:

You and each of you are hereby notified that an action has been brought in said court by W. H. Blackburn, plaintiff, against you as defendants, to recover the possession of a certain part or parcel of the Eacho Lode mining claim, situate in Cripple Creek mining district, El Paso county, Colorado, for the sum of one thousand dollars damages, for the further sum of three hundred dollars expended in

behalf of said adverse claim, and for the costs of suit, as more fully set forth and described in the complaint filed herein and to which reference is here made.

You are hereby required to appear and demur or answer to the complaint filed in said action, in said court, within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do, the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, and will apply to the court for the relief demanded therein.

8 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of [SEAL.] the said circuit court, at the city of Denver, in said district, this 27th day of August, A. D. 1897, and of the Independence of the United States the 122d year.

ROBERT BAILEY, *Clerk.*

*Proof of Service.*

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

NOVEMBER 3, A. D. 1897.

I hereby certify that I received the within writ on the 27th day of August, A. D. 1897, and that the same is returned without service, in accordance with the written instructions of plaintiff's attorney. This writ therefore returned without service this 3d day of November, A. D. 1897.

J. A. ISRAEL, *Marshal,*
By J. S. WARWICK,
*Deputy Marshal.*

(Indorsed:) No. 3623. United States circuit court for the district of Colorado. W. H. Blackburn, plaintiff, *versus* The Portland Gold Mining Co. *et al.*, defendants. Summons. Filed Nov. 4,
9 1897. Robert Bailey, clerk. J. E. Rockwell, of Colo. Sp'gs, attorney for plaintiff.

Fifth Day, November Term.

MONDAY, *November 8th, A. D.* 1897.

Present: The Honorable Moses Hallett, district judge, and other officers, as noted on the 2d instant.

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| W. H. BLACKBURN *vs.* THE PORTLAND GOLD MINING COMPANY and W. S. Stratton. | 3623. Action for Possession of Specific Real Property and for Damages. |

At this day comes the plaintiff, by Albert Smith, Esq., his attorney, and the defendants, by W. H. Bryant, Esq., their attorney, also come; and the motion of the defendants to dismiss this cause,

coming on now to be heard, is argued by counsel, and the court being now fully advised in the premises, it seemeth to the court now here that it hath not jurisdiction of this cause.

Wherefore it is considered by the court that this cause be, and the same is hereby, dismissed out of this court, and that the defendants go hence hereof without day and have and recover of and from the plaintiff their costs by them in this behalf laid out and expended, to be taxed, and have execution therefor.

10 UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court for the District of Colorado.

W. H. BLACKBURN, Plaintiff in Error,
*vs.*
THE PORTLAND GOLD MINING COMPANY and W. S. STRATTON, Defendants in Error.

*Assignment of Error.*

Now comes W. H. Blackburn, the plaintiff in error, by his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

I.

The court erred in sustaining the motion of defendants below.

II.

The court erred in deciding that an adverse suit or suit brought in support of a protest and adverse —, under the provisions of section 2325 and section 2326 of the Revised Statutes of the United States, did not raise a Federal question and confer Federal jurisdiction.

III.

The court erred in deciding that W. S. Stratton was not a nominal party, and that the making of said Stratton a party defendant defeated or ousted the jurisdiction of the Federal court.

11 IV.

The court erred in ruling that the Federal court had no jurisdiction of the cause stated in said complaint.

V.

The court erred in dismissing the plaintiff's complaint.

VI.

The court erred in not dismissing the action as to W. S. Stratton, defendant, the resident of Colorado, and proceeding with the action

against The Portland Gold Mining Company, defendant, the non-resident of the State of Colorado.

CHAS. J. HUGHES, JR.,
*Attorney for Plaintiff in Error.*

(Indorsed:) 3623. U. S. circuit court. W. H. Blackburn *vs.* The Portland Gold Mining Co. *et al.* Assignment of errors. Filed Dec. 18, 1897. Robert Bailey, clerk. Chas. J. Hughes, Jr., pl'ff's att'y.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court.

W. H. BLACKBURN, Plaintiff,
*vs.*
THE PORTLAND GOLD MINING COMPANY and W. S. STRATTON, Defendants.

12 Be it remembered that heretofore and at the November term, A. D. 1897, of the said court, this cause came on to be heard before the court upon motion to dismiss; which said motion was in words and figures as follows, to wit.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court.

W. H. BLACKBURN, Plaintiff,
*vs.*
THE PORTLAND GOLD MINING COMPANY and W. S. STRATTON, Defendants.

Come now the defendants above named, by Thomas, Bryant and Lee, their attorneys, and move the court to dismiss the above-entitled cause for the following reasons, to wit:

1st. This court has no jurisdiction either of the parties or the subject-matter of said suit.

2nd. That noth the plaintiffs and defendants in said suit are citizens of the State of Colorado, and the same is not one wholly between citizens of different States.

3rd. It does not appear in said complaint that the amount in controversy in said suit is two thousand dollars.

4th. That it appears from said complaint that said suit is one which cannot under the Constitution and statutes of the United States be brought in this court.

A. T. GUNNELL,
THOMAS, BRYANT & LEE,
*Att'ys for Defendants.*

And thereupon certain proceedings were had in said cause, and after argument of said motion the following order was entered of record, to wit:

13 W. H. BLACKBURN
*vs.*
PORTLAND GOLD MINING CO. & W. S. STRATTON. } # 3623.

At this day comes the plaintiff, by Albert Smith, Esq., his attorney, and the defendants, by W. H. Bryant, Esq., their attorney, also came; and the motion of defendant to dismiss this cause coming on now to be heard, is argued by counsel; and, the court being now fully advised in the premises, it seemeth to the court now here that it hath not jurisdiction of this cause.

Wherefore it is considered by the court that this cause be, and the same is hereby, dismissed out of this court, and that the defendants go hence hereof without day and have and recover of and from the plaintiff their costs by them in this behalf laid out and expended, to be taxed, and have execution therefor.

And forasmuch as the said several matters had and done in said cause objected to and insisted upon, as aforesaid, do not appear in the record, plaintiff, by his counsel, brings this his bill of exceptions and asks that the same be signed, sealed, and made a part of the record herein, which is accordingly done, in pursuance of the statute in such case made and provided, on, to wit, this 20 day of Dec., A. D. 1897.

MOSES HALLETT,
*Dist. Judge.*

(Indorsed:) No. 3623. W. H. Blackburn *vs.* The Portland Gold Mining Company *et al.* Bill of exceptions. Filed Dec. 20, 1897. Robert Bailey, clerk.

14 UNITED STATES OF AMERICA, } *ss:*
*District of Colorado,* }

In the U. S. Circuit Court.

WILLIAM H. BLACKBURN, Plaintiff,
*vs.*
THE PORTLAND GOLD MINING COMPANY, Defendant. } No. 3623.

I, Moses Hallett, district judge of the United States within and for the district of Colorado, do hereby certify that the above-entitled cause came on for hearing before the court, and it appearing to the court that the circuit court of the United States did not have jurisdiction to try the same, the said cause was by the court dismissed for want of jurisdiction.

That said question of the jurisdiction of the circuit court of the United States was the only one involved in said cause, and was the sole question upon which the said cause was dismissed and the final decree entered, and is the question upon which a writ of error is prayed.

MOSES HALLETT, *Judge.*

(Indorsed:) 3623. U. S. circuit court. William H. Blackburn *vs.* Portland Gold Mining Company. Certificate as to jurisdiction. Filed Mar. 14, 1898. Robert Bailey, clerk.

15 THE UNITED STATES OF AMERICA, }
*District of Colorado.* }

Know all men by these presents that we, William H. Blackburn, as principal, and Eben Smith & R. H. Reid, are held and firmly bound unto the Portland Gold Mining Company in the full and just sum of five hundred dollars, to be paid to the said The Portland Gold Mining Company, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at the November term, A. D. 1897, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between William H. Blackburn, plaintiff, and The Portland Gold Mining Company, defendant, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error to the Supreme Court of the United States and a citation directed to the said The Portland Gold Mining Company, citing and admonishing it to be and appear in the United States Supreme Court, at the city of Washington, D. C., thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said William H. Blackburn shall prosecute said writ of error to
16 effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM H. BLACKBURN. [SEAL.]
EBEN SMITH. [SEAL.]
R. H. REID. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved M'ch 17, 1898.
MOSES HALLETT, *Judge.*

*Justification.*

THE UNITED STATES OF AMERICA, }
*District of Colorado,* } *ss:*

William H. Blackburn, as principal, and Eben Smith and R. H. Reid, sureties, on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate the sum below set opposite his name—that is to say, as to Eben Smith, one thousand dollars—over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

WILLIAM H. BLACKBURN.
EBEN SMITH.
R. H. REID.

Subscribed and sworn to before me, at Denver, this 15th day of March, A. D. 1898.

My commission expires Dec. 22, 1901.

[SEAL.] HARRY C. WATT,
*Notary Public.*

17 (Indorsed:) Gen. No., 3623. Circuit court of the United States, district of Colorado. Wm. H. Blackburn *vs.* The Portland G. M. Co. Bond on writ of error, $500. Filed Mar. 17, 1898. Robert Bailey, clerk.

18 *Writ of Error to Circuit Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

[Vignette.]

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, between William H. Blackburn and The Portland Gold Mining Company, a manifest error hath happened, to the great damage of the said William H. Blackburn, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 15th day of April next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal United States Circuit Court, District of Colorado.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of March, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the 122d year.

ROBERT BAILEY, *Clerk.*

Allowed by—
MOSES HALLETT, *Judge.*

19 [Endorsed:] Gen. No., 3623. Circuit court of the United States. Wm. H. Blackburn, plaintiff in error, *vs.* The Portland

Gold M. Co. & W. S. Stratton. Writ of error to circuit court U. S., district of Colorado. Filed Mar. 17, 1898. Bobert Bailey, clerk. —— ——, attorney for plaintiff in error.

*Return.*

THE UNITED STATES OF AMERICA, }
*District of Colorado,* } ss:

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Denver, in said district, this fifth day of April, 1898.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY, *Clerk,*
By CHARLES W. BISHOP,
*Deputy Clerk.*

20 *Citation, U. S. — Court.*

THE UNITED STATES OF AMERICA, }
*District of Colorado.* }

[Vignette.]

The United States of America to the Portland Gold Mining Company and W. S. Stratton, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein William H. Blackburn is plaintiff in error and you are defendant-in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

MOSES HALLETT, *Judge.*

21 [Endorsed:] Gen. No., 3623. — court of the United States, district of Colorado. Wm. H. Blackburn, plaintiff in error, *vs.* The Portland G. M. Co. & W. S. Stratton, defendant- in error. Citation. Filed Mar. 17, 1898. Robert Bailey, clerk. —— ——, attorney for plaintiff in error.

Service is hereby accepted this — day of March, A. D. 1898.
THOMAS, BRYANT & LEE,
*Attorneys for Def'ts in Error.*

22 UNITED STATES OF AMERICA, }
*District of Colorado,* } ss:

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages, numbered from one to seventeen, both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings, and of all thereof, heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein W. H. Blackburn was plaintiff and The Portland Gold Mining Company and W. S. Stratton were defendants, as fully and completely as the same still remain on file or of record in my office at Denver.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this fifth day of April, A. D. 1898.

ROBERT BAILEY, *Clerk*,
By CHARLES W. BISHOP,
*Deputy Clerk.*

Endorsed on cover: Case No. 16,842. Colorado C. C. U. S. Term No., 275. William H. Blackburn, plaintiff in error, *vs.* The Portland Gold Mining Company & W. S. Stratton. Filed April 9th, 1898.